

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

WILLARD KENNY O'DELL §
VS. § CIVIL ACTION NO. 1:07cv779
DIRECTOR, TDCJ-CID §

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Willard Kenny O'Dell, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable orders of this court. The magistrate judge has submitted a Report and Recommendation recommending the petition be dismissed as barred by the applicable statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the records, pleadings and all available evidence. Petitioner filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

In his objections, petitioner states he is entitled to invoke the doctrine of equitable tolling because he suffered heart problems which delayed the preparation of his petition.

The period of limitations applicable to petitions seeking a writ of habeas corpus is subject to the doctrine of equitable tolling. *Davis v. Johnson*, 158 F.3d 806 (5th Cir. 1998). The doctrine is available in rare and exceptional circumstances where strict application of the statute of limitations would be inequitable. *Coleman v. Johnson*, 184 F.3d 398 (5th Cir. 1999).

Petitioner has failed to demonstrate he is entitled to equitable tolling in this matter. While a severely debilitating illness might entitle a petitioner to equitable tolling, petitioner states no more than that his condition at times caused him to feel below his normal physical condition and limited his daily activities. This statement is insufficient to demonstrate petitioner was

incapacitated for the entire period of limitations or even a significant portion of the period.

Petitioner's objections are therefore without merit.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment shall be entered dismissing the petition.

So **ORDERED** and **SIGNED** this 5 day of November, 2009.



Ron Clark, United States District Judge